

2. On April 2, 1996 Defendant Keller Industries filed bankruptcy in Cause Number 96-484 in the U.S. Court Bankruptcy Court, District of Delaware under Title 11 of the United States Code. (See Exhibit A attached hereto and incorporated by reference herein.) Defendant Alamo Enterprises was apprised of this filing by Co-Defendant Keller's Plea in Bar filed on April 8, 1996 (See Exhibit B attached hereto and incorporated by reference herein.)

3. A federal question has now been injected into this lawsuit as Co-Defendant Alamo Enterprises, the retailer, has a pending cross-action against now bankrupt Co-Defendant Keller Industries, Inc., the manufacturer for contribution and indemnity as a "downstream" conduit of an allegedly defectively designed ladder. This contribution and indemnity is based on Texas common-law and contractual bases. Additionally, Plaintiff, through their expert witness have alleged failure to warn and labeling causes of actions against Defendants.

4. This petition is timely under 28 U.S.C. § 1446(b). True and correct copies of the following documents are attached hereto, pursuant to 28 U.S.C. §1446 (b) and Amended Local Rule 3J:

- (1) All executed process in the case;
- (2) Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings;
- (3) All orders signed by the state judge;
- (4) A copy of the docket sheet;
- (5) An index of matters being filed; and
- (6) A list of all counsel of record, including addresses, telephone numbers and parties represented.

5. 28 U.S.C. §1441(a) permits removal of civil cases pending in state courts where a district court of the United States has original jurisdiction.

6. 28 U.S.C. §1446(b) permits removal within 30 days of receipt of a pleading, motion, or order which indicates that the case is removable. Consequently, this removal action is timely filed.

7. 28 U.S.C. §1331 states that "district courts have original jurisdiction of all civil actions arising under the Constitution, law, or treaties of the United States."

8. 28 U.S.C. §1334(b) establishes original jurisdiction with the district courts in "all civil proceedings arising under Title 11, or arising in or related to cases under Title 11." This case is inextricably intertwined with the bankruptcy of Co-Defendant Keller Industries, Inc., the ladder manufacturer as Alamo, the retailer, has a common-law and contractual indemnity rights against the bankrupt party for the product liability allegations made against both the manufacturer and the retailer. As Co-Defendant Keller Industries, Inc. has a \$1 million self-insured retention, this Defendant's right to said indemnity is materially affected by the bankruptcy. Therefore, removal is appropriate.

9. Therefore, Defendant Alamo removes this case to this Court on the above-said bases.

Respectfully submitted,

**THORNTON, SUMMERS, BIECHLIN,
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LUMBER & BUILDING SUPPLIES,
D/B/A ALAMO ENTERPRISES
BUILDING SUPPLIES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded to the following counsel of record, was mailed certified mail, return receipt requested on this the 10th day of April, 1996.

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MIRIAM O. VICTORIAN

1. CIVIL DOCKET SHEET
2. PLAINTIFF'S ORIGINAL PETITION
3. CITATION: MOORE LUMBER & BUILDING SUPPLIES, D/B/A ALAMO ENTERPRISES BUILDING SUPPLIES, INC.
4. CITATION: HORACIO SALINES
5. CITATION: KELLER INDUSTRIES, INC.
6. CITATION: ALAMO ENTERPRISES BUILDING & SUPPLIES, INC.
7. PLAINTIFFS' FIRST AMENDED PETITION
8. DEFENDANT ALAMO'S ORIGINAL ANSWER TO PLAINTIFFS' FIRST AMENDED ANSWER
9. DEFENDANT HORACIO L. SALINAS' ORIGINAL ANSWER TO PLAINTIFFS' FIRST AMENDED PETITION
10. DEFENDANT KELLER'S ORIGINAL ANSWER TO PLAINTIFFS' FIRST AMENDED PETITION
11. PLAINTIFFS' SECOND AMENDED PETITION

12. DEFENDANT ALAMO'S CROSS-ACTION AGAINST KELLER INDUSTRIES
13. DEFENDANT ALAMO'S FIRST AMENDED ORIGINAL ANSWER
14. PLAINTIFFS' DESIGNATION OF EXPERT WITNESSES AND PRODUCTION OF EXPERTS' REPORT
15. DEFENDANT ALAMO'S SPECIAL EXCEPTIONS
16. DEFENDANT KELLER'S AMENDED ANSWER TO PLAINTIFFS' SECOND AMENDED PETITION
17. DEFENDANT KELLER'S CROSS-ACTION AGAINST ALAMO
18. DEFENDANT ALAMO'S PLEA IN ABATEMENT
19. PLAINTIFFS' SPECIAL EXCEPTIONS TO DEFENDANT ALAMO'S FIRST AMENDED ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES
20. PLAINTIFFS' THIRD AMENDED PETITION
21. DEFENDANT KELLER'S SECOND AMENDED ANSWER
22. DEFENDANT ALAMO'S CROSS-ACTION AGAINST HORACIO SALINAS
23. DEFENDANT ALAMO'S SECOND AMENDED ORIGINAL ANSWER
24. PLAINTIFFS' SPECIAL EXCEPTIONS TO DEFENDANT ALAMO'S SECOND AMENDED ORIGINAL ANSWER
25. DEFENDANT ALAMO'S THIRD AMENDED ORIGINAL PETITION
26. DEFENDANT ALAMO'S FOURTH AMENDED ORIGINAL ANSWER
27. DEFENDANT KELLER'S THIRD AMENDED ANSWER
28. DEFENDANT KELLER INDUSTRIES' PLEA IN BAR AND BANKRUPTCY FILING
29. ORDER SETTING HEARING KELLER INDUSTRIES' SPECIAL EXCEPTIONS
30. ORDER GRANTING PLAINTIFFS' MOTION FOR DOCKET CONTROL CONFERENCE AND FOR JURY TRIAL
31. ORDER SETTING HEARING ON DEFENDANT'S MOTION TO COMPEL
32. ORDER SETTING HEARING ON DEFENDANT'S MOTION TO BIFURCATE TRIAL REGARDING ISSUE OF PUNITIVE DAMAGES
33. ORDER SETTING HEARING DATE ON PLAINTIFFS' MOTION TO COMPEL
34. ORDER SETTING HEARING ON DEFENDANT KELLER'S MOTION TO COMPEL COMPLETE ANSWERS TO INTERROGATORIES, MOTION TO PRESERVE EVIDENCE, AND MOTION TO DESIGNATE EXPERTS

35. ORDER GRANTING DEFENDANT ALAMO'S MOTION FOR BIFURCATED TRIAL
36. ORDER SETTING HEARING ON MOTION TO DISCLOSE EXPERTS AND DOCTORS AND REDUCE TO TANGIBLE FORM THE OPINIONS, FACTUAL OBSERVATIONS, PHYSICAL FINDINGS AND TEST RESULTS OF EXPERTS AND DOCTORS
37. ORDER SETTING HEARING PATRICK J. CALLAHAN AND JONATHAN P. SCHAEFER'S MOTION TO APPEAR PRO HAC VICE AS CO-COUNSEL FOR DEFENDANT KELLER INDUSTRIES, INC.
38. ORDER GRANTING DEFENDANT KELLER'S MOTION TO BIFURCATE TRIAL REGARDING ISSUES OF PUNITIVE DAMAGES, MOTION TO PRESERVE EVIDENCE, AND MOTION TO DESIGNATE EXPERTS
39. ORDER SETTING HEARING DATE OF DEFENDANT SALINAS' FIRST MOTION FOR CONTINUANCE
40. ORDER FOR NON-SUIT
41. ORDER SETTING HEARING DATE ON PLAINTIFFS' MOTION FOR DOCKET CONTROL CONFERENCE
42. ORDER SETTING TRIAL DATE
43. ORDER SETTING HEARING ON DEFENDANT ALAMO ENTERPRISES' MOTION FOR SUMMARY JUDGMENT
44. STAY ORDER
45. NOTICE OF FILING REMOVAL
46. LIST OF ALL COUNSEL OF RECORD AND PARTIES INCLUDING THEIR ADDRESS